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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,395	11/07/2001	Alan L. Backus	45891/GSL/A641	3764
7590 07/27/2006			EXAMINER	
Grant T. Langton Jeffer, Mangels, Bulter & Marmaro LLP 1900 Avenue of the Stars, Seventh Floor Los Angeles, CA 90067			BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/039,395

Applicant(s)

BACKUS ET AL.

Examiner

Drew E. Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/31/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. The indicated allowability of claims 1-15 is withdrawn in view of the newly discovered reference(s) to Perkins and Pearlman et al. Rejections based on the newly cited reference(s) follow.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 3/31/06 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. The following references are missing: CH 603130A5, IT 555893, KR 206810. The information disclosure statement also fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. In addition, the NPL references directed to court proceedings have not been considered since they are not accessible to the public are not relevant to the current application.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 8-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has not pointed out these claim limitations are supported by the specification.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 14 recites "a continuing intermittent duty cycle". It is not clear whether the cycle is intermittent, or continuous.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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2. Claims 1-8, 10, and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearlman et al [Pat. No. 5,801,362] in view of Perkins [Pat. No. 4,508,024].

Pearlman et al teach a device comprising an enclosure (Figure 1, #20), a constant radiant heat source (Figure 2, #27), cool-air holes (Figure 2, #44; Figure 3, #6), outside air introduction fans which also act as internal air movement fans (Figure 2, #42; Figure 3, #52), motors for the fans (Figure 2, #41; Figure 3, #54), a spit powered by the fan motor (Figure 6, #64), a controller for the heater comprising a start switch (Figure 12), and the controller cycling the heater on and off (column 11, line 61). Phrases such as "between about 20% on and about 70% on" and "constant heat" are merely preferred methods of operating the claimed apparatus. Pearlman et al do not recite an adjustable vent and temperature adjustor (claim 1), or a manual lever for the temperature adjustor (claim 8). Perkins teaches a device comprising cool-air holes (Figure 1, #42), adjustable vents (Figure 1, #46-47), and a manual lever for the temperature adjustor (Figure 1, #44). It would have been obvious to one of ordinary skill in the art to incorporate the vent features of Perkins into the invention of Pearlman et al since both are directed to cooking devices, since Pearlman et al already included cool-air holes and fans (Figure 2, #42 & 44; Figure 3, #6 & 52), and since the vents features of Perkins would have permitted more accurate and precise control of air flow in the device of Pearlman et al.

3. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearlman et al, in view of Perkins, as applied above, and further in view of Bedford et al [Pat. No. 5,639,497].

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Pearlman et al and Perkins teach the above mentioned components. Pearlman et al and Perkins do not recite an electronic actuator, or a gas heater. Bedford et al teach a device comprising a vent with an electronic actuator in the form of a solenoid (Figure 2, #43) and a gas heater (Figure 3, #12). It would have been obvious to one of ordinary skill in the art to incorporate the features of Bedford et al into the invention of Pearlman et al, in view of Perkins, since all are directed to cooking devices, since Pearlman et al already included a radiant heat source (Figure 2, #27), since Perkins already included a manual vent (Figure 1, #44), since Bedford et al teach that gas was an effective means for applying radiant heat in cookers (column 6, lines 9-30), and since the automatic damper control of Bedford et al would have eliminated the need for the operator to manually adjust the vent of Perkins.


4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wrasse [Pat. No. 5,176,124] and Kalgren [Pat. No. 1,993,607] teach cooking devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
DREW BECKER  
PRIMARY EXAMINER  
7-21-06